IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE M.NARAYANA REDDY

WRIT PETITION NO : 537 of 2005

Between:

S. Raja Babu, S/o. Sri Kotaiah,
1-46/37, Venkatadrinagar, Kazipet, Warangal District, Rep. by his G.P.A.
Shri A.R.K. Murthy

..... PETITIONER

AND

1 Union of India, Rep. by its General Manager,
South Central Railway, Rail Nilayam, Secunderabad.
2 Chief Track Engineer (TM), South Central Railway, Secunderabad.
3 Divisional Railway Manager, (BG), South Central Railway, Secunderabad.
4 Senior Divisional Engineer (South), South Central Railway, Secunderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate Writ, Order orDirection more particularly one in the nature of a Writ of Mandamus declaring the order in A.A.No. 14 of 1997 dated 29-07-1998 and the orders of the division Bench on 19-9-2001 and 20-8-2004 as nonest in law and consequently direct the designated judge to take up A.A 14 of 1997 on file and dispose of the same in accordance with law and pass such other further orders

Counsel for the Petitioner:MR.A.RAMALINGESWAR RAO

Counsel for the Respondent Nos.1 to 4: MR.GOURI SHANKAR SANGHI

The Court made the following Oral Order: (per Sri Devinder Gupta, CJ)

An application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') seeking appointment of an independent Arbitrator by the Chief Justice was filed by the petitioner. As per the Rules of the Court, the application was posted before the learned single judge, who, on 29.7.1998, formulated question that whether at the time of appointment of an Arbitrator, the Court should investigate and decide whether the particular claim falls within the accepted matters under Clause 63 of the Standard General Conditions of Contract and therefore, the particular dispute is referable to arbitration or not. This reference was made because learned single judge could not agree with another judgment of learned single judge of this Court Y. PARTHASARATHI vs. THE GENERAL MANAGER, RAILWAY ELECTRIFICATION & OTHERS (). The question of law thus referred by learned single judge came up for consideration before a Division Bench. The Division Bench on 19.9.2001 took up the matter for consideration, on which date, the learned counsel for the petitioner was not present and the Division Bench declined to answer the question which according to the Division Bench had become purely academic in nature in view of what was brought before the Division Bench by the learned Counsel for the Railways. Thus, while declining to answer the question as academic in nature, the Division Bench also proceeded to dismiss the application, which the petitioner had filed under Section 11 of the Act. In order to have the said order of dismissal being set aside, an application was moved, which was also dismissed on 20.8.2004 (Application SR. No.6284/2004). The present writ petition has now been filed seeking disposal of A.A. No.14 of 1997 on merits by learned single judge in accordance with law.

We have heard the learned counsel for the parties.

Once learned single judge had made reference on a question of law to be decided by a Division Bench, the Division Bench was seized of only the question of law and not the main application under Section 11 of the Act. In KESHO NATH KHURANA vs. UINION OF INDIA & OTHERS (), inter alia, in respect of practice and procedure, it is postulated, that where a single Judge refers to a Division Bench a question of law arising in a Second Appeal, the Division Bench should send the matter back to the single Judge, after deciding such question of law referred to it, but in such a case, the Division Bench cannot by itself proceed to dispose of such case on the merits or demerits thereof. Therefore, the Division Bench, neither could have allowed the application nor rejected the same and the said application ought to have

been dismissed by the nominee of the Chief Justice, which in this case was learned single Judge before whom Arbitration Application No. 14 of 1997 was pending. The Division Bench had jurisdiction only to answer the reference, which had been constituted specifically for that purpose by the Chief Justice, in deference of wishes of learned single judge who had referred the matter. Even the order dismissing the application as well as the application declining to set aside that order are both bad in law and have to be set aside.

Resultantly, Application No. 14 of 1997 deemed to be pending as on date and will have to be decided in accordance with law. Accordingly, the writ petition is allowed. Direction is issued for placing A.A. No. 14 of 1997 before the learned single judge dealing with such type of applications and for being decided in accordance with law.

The writ petition is accordingly allowed. No costs.

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DEVINDER GUPTA, CJ

Date: 4th February, 2005

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M. NARAYANA REDDY,J

Pnb

To

1 The General Manager,

Union of India, South Central Railway, Rail Nilayam, Secunderabad.
2 The Chief Track Engineer (TM), South Central Railway, Secunderabad.
3 The Divisional Railway Manager, (BG), South Central Railway, Secunderabad.
4 The Senior Divisional Engineer (South), South Central Railway, Secunderabad.

5 Two C.D.copies